

BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 5204

SENSITIVE

In the Matter of

Hofmeister for Congress Committee
and Curtis Coonrod, as Treasurer
Gary Hofmeister
Hofmeister Personal Jewelers, Inc.
Dreamtech, Inc.

GENERAL COUNSEL'S REPORT #2

II. BACKGROUND

On May 17, 2001, the Commission found reason to believe that the Committee knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by accepting corporate contributions and a contribution in the name of another.

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9 **IV. PROHIBITED CONTRIBUTIONS**

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11 **A. Dreamtech Transaction**

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13 The predominant issue in this matter is the Candidate's \$25,000 advance to his campaign
14 on December 31, 1997. During the audit, HPJ appeared to be the original source of
15 these funds. The evidence shows that on December 30, 1997, the candidate deposited a \$25,000
16 check into his personal bank account. The check was from HPJ and it was made payable
17 to Dreamtech.³

18 In the Candidate's response to the Commission's reason to believe finding and subpoena,
19 he explained that the payment from HPJ to Dreamtech, a business operated by the Candidate's
20

³ The endorsement on the check reads: Dreamtech Inc.
Gary Hofmeister
Pay to the order of
acct. # [REDACTED]

son, was a legitimate payment to an independent contractor. *See* Attachments 2 and 4. In support of his argument, he provided a copy of HPJ's ledger entry showing the \$25,000 payment to Dreamtech. Attachment 4 at 2. He indicated that HPJ had a "loose" arrangement with Dreamtech through which HPJ paid Dreamtech \$25,000 a year for computer services. *See* Attachment 1 at 1. The Candidate further explained that he signed the check over to himself because Dreamtech owed him these funds. The Candidate claims that he provided a significant amount of funding to keep Dreamtech afloat, but to no avail. As Dreamtech failed as a business venture, the Candidate tried to recoup some of his losses and endorsed the \$25,000 Dreamtech check from HPJ over to himself. He states, "I signed [the \$25,000 check] over to myself because I had lent the company much more than that over the previous two years and used this opportunity to get a partial repayment. Unfortunately, we did not do the documentation we should have done because we were dealing with family...." *See* Attachment 2.

Neither HPJ nor Dreamtech responded to the factual and legal analysis or the subpoenas that were issued to them. However, as noted, the Candidate indicated that he is handling the matter on behalf of himself and the two corporations. The Candidate is the Chief Executive Officer of HPJ and he holds 84% of its stock. He is listed as one of two principals and incorporators of Dreamtech along with his son, Ramsay Hofmeister.

The treasurer's response only provides speculation as to what occurred regarding this transaction. He does not appear to have any personal knowledge. He states, "[t]here are many tax, business, and personal reasons why a person in Gary Hofmeister's circumstances would have handled the transactions as he did, all of which would be permissible. Given Dreamtech was started and owned by the candidate and his son, it is very likely Gary Hofmeister had loaned

1 money to the corporation for working capital and was entitled to have it repaid on demand. At
2 the same time, it would be fully understandable if Dreamtech had no cash, but was owed money
3 by HPJ, which was probably a customer." See Attachment 5 at 5-6.

4 The available information shows that a portion of the Candidate's advance appears to
5 have originated from a corporate source, either HPJ or Dreamtech, two corporations that the
6 Candidate owns or appears to exercise control over. In order to determine whether any portion of
7 the funding is permissible, the funds must be traced to the source. The Candidate claims that he
8 obtained a \$25,000 check from Dreamtech as repayment for an outstanding business loan. The
9 repayment of a legitimate loan would qualify as personal funds under 11 C.F.R. § 110.10(b)(1).
10 However, the Candidate could not document that there was a loan or that Dreamtech was
11 otherwise obligated to pay him.⁴

⁴ Indiana recognizes oral agreements to loan money, with the conditions that certain terms of the loan are established, absent a history of business dealings between the parties, and mutuality of obligation exists. See *First National Bank of Logansport v. Logan MFG. Co., Inc.* 577 N.E.2d 949 (Ind. 1991). However, the Candidate provided no particulars regarding the loans he claims to have made to his son such as the terms of repayment and the interest rate. Because no documentation exists and there appears to be no agreement, even orally, about the terms of repayment, the Candidate may not have had rightful access to the funds.

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15 Only a portion of the \$25,000 in corporate funds reached the Committee. The corporate
16 funds flowed through the Candidate's personal account that contained permissible personal
17 funds. See 11 C.F.R. § 110.10. Therefore, the Office of General Counsel requested that the
18 Audit Division analyze the Candidate's personal account to determine the amount of corporate
19 funds that were used to make the \$25,000 advance to the Committee. The Audit Division used a

1 "Modified FIFO" analysis to evaluate this transaction and determined that \$15,770.66 of the
2 \$25,000 was impermissible.⁵ See Attachment 7.

3 With respect to the Committee's responsibility for accepting the advance at issue, the
4 treasurer stated that he routinely inquired as to whether the funds came from personal as opposed
5 to corporate sources and he was assured they were personal funds. Attachment 5 at 2. He stated
6 he had no reason to presume he needed to conduct an investigation and review the Candidate's
7 personal corporate records. *Id.* He stated "[i]t was common knowledge in Indianapolis political
8 circles that Gary Hofmeister used his own resources to finance his campaign. No reasonable
9 person would have doubted or questioned his ability to do so...." *Id.* He further stated:

10 In order for the Commission to conclude that [he is] culpable regarding this transaction,
11 the Commission would have to expect that [he] would question the permissibility of the
12 carry-forward balance from the prior year, and, upon observing that the campaign
13 records showed that this amount came from a permissible personal account, [he] should
14 have performed an audit of the candidate's personal accounts and the accounts of two
15 corporations. In other words, the Commission expects that [he] should have presumed
16 that the candidate and the previous treasurer willfully violated Federal law and that the
17 Committee books and records prepared prior to [his] appointment as treasurer were
18 false and misleading. *Id.* at 5.
19

20 The treasurer is responsible for examining all contributions received for evidence of
21 illegality and the treasurer shall make his or her best efforts to determine the legality of
22 contributions that present genuine questions as to whether they were made by corporations. See
23 11 C.F.R. § 103.3(b). Mr. Coonrod's argument appears credible and his actions appear to be
24 consistent with the requirements of section 103.3(b). He inquired as to whether the advances at
25 issue were made from personal funds and he was told that they were. Furthermore, Mr. Coonrod

⁵ This Office notes that the Candidate loaned the Committee a total of \$132,628 between December 31, 1997 and June 30, 1998. The Committee made two repayments to the Candidate in the amounts of \$10,000 and \$5,000 on November 5 and November 24, 1998 respectively.

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1 had no reason to believe that they were corporate funds since they came from a personal account
2 of the Candidate. Based on Mr. Coonrod's representation that he inquired about the source of the
3 contributions at issue and was led to believe that they were from personal sources, it appears he
4 should not be held responsible for this aspect of the case. Cf. Statement of Reasons in MUR
5 5033 (In a corporate reimbursement scheme, the Commission noted "the fact that an authorized
6 committee receives contributions from individuals employed by the same company, for the same
7 amount, and on the same date, without other factors, is not sufficient to find reason to believe
8 that a violation has occurred").

9 Nevertheless, the Candidate is an agent of the Committee for purposes of making
10 disbursements and receiving contributions on behalf of the Committee. 11 C.F.R. § 101.2(a).
11 Therefore, the Candidate was on both sides of the transaction and he invoked the Committee's
12 participation in this transaction.⁶ As a result, the actions of the Candidate could be imputed to
13 the Committee in this instance. However, given the fact that the Candidate was the central figure
14 in this transaction, this Office believes that the Commission's enforcement efforts should focus
15 on the Candidate. Therefore, the Office of General Counsel recommends that the Commission
16 take no further action against the Committee for violations of 2 U.S.C. §§ 441b(a) and 441f.

⁶ The regulations do not address the question of whether the treasurer must ratify the actions of the candidate when the candidate is acting as an agent. See 11 C.F.R. § 101.2; see also 11 C.F.R. § 102.7(c)(agent authorization from treasurer). However, in this case, the treasurer claims that he was not aware of the actual source of the contribution. Therefore, there is a question whether the treasurer was in a position to ratify the Candidate's actions.

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VII.

RECOMMENDATIONS

1. Take no further action against Hofmeister for Congress Committee and Curtis Coonrod, as treasurer for violations of 2 U.S.C. §§ 441b(a) and 441f.

Date

7/12/02

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